Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101; telephone: (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subparts G 71.181 and F 71.171, as republished in Advisory Circular AC 70-3A dated January 3, 1983, contains the description of transition areas and control zones designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area and control zone at Laredo, TX, will necessitate an amendment to these subparts. This amendment will be required at Laredo, TX, since a review of the transition area and control zone revealed the transition area for Runway 17 is inadequate and since the IFR procedure to the Killam Hurd and Laredo Auxiliary Airports have been canceled, eliminating the requirement for designated airspace at these two airports.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-ASW-32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 877-2630. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

§ 71.171 [Amended]

Laredo, TX Revised

Within a 5-mile radius of the Laredo International Airport (latitude 27°32'40" N., longitude 99°27'40" W.), that airspace within Mexico being excluded. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

§ 71.181 [Amended]

Laredo, TX Revised

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Laredo International Airport (latitude 27°32'40" N., longitude 99°27'40" W.); and within 5 miles each side of a 003° bearing of the airport, extending from the 8.5-mile radius area to 15 miles north; and within 5 miles each side of the Laredo VORTAC 141° and 328° radials, extending from the 8.5-mile radius area to 10 miles southeast and 20 miles northwest of the VORTAC. That airspace within Mexico is excluded.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(c))

Note: The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on August 8, 1983.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc 83-23115 Filed 8-22-83; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9152]

The Gillette Co.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a leading manufacturer of razor blades, razors, toiletries and grooming aids, among other things, to make alternative advertising allowances available to customers that compete in the resale of Gillette products but do not regularly advertise in newspapers. The order would also require the company to notify all its customers, as specified, of its advertising and promotional programs, and of the availability of usable and feasible alternatives. Such alternatives shall consist of handbills and circulars in amounts not less than 1,000; off-shelf, end-of-aisle or dump displays; window or wall posters and other in-store promotional activities acceptable to the company. Further, the company would be required to distribute a special written notice informing customers of the change in its promotional programs and provide sales personnel with a copy of the order.

DATE: Comments must be received on or before October 24, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS–1, Karen G. Bokat, Washington, D.C. 20580, (202) 724–1679.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days, public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Advertising, Grooming aids, Trade practices.

In the matter of The Gillette Co., a corporation. Docket No. 9152.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between The Gillette Company ("Gillette"), a corporation, hereafter sometimes referred to as respondent, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Gillette is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with an office and its principal place of business located at Prudential Tower Building, Boston, Massachusetts 02199.

2. Gillette has been served with a copy of the Complaint issued by the Federal Trade Commission on February 19, 1981, charging it, *inter alia*, with violation of Section 5 of the Federal Trade Commission Act and Section 2 of the Clayton Act, and has filed an answer to said complaint denying said charges.

3. Gillette admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Gillette waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This Agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it will be placed on the record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Gillette, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This Agreement is for settlement purposes only, is entered into without trial or final adjudication of any issued of fact or law herein and without the taking of any evidence or testimony, and does not constitute any evidence or any admission by Gillette that the law has been violated as alleged in the Complaint.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may without further notice to Gillette, (1) issue its decision containing the following Order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other Orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to Gillette's address as stated in this Agreement shall constitute service. Gillette waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in this Agreement may be used to vary or to contradict the terms of the Order.

8. Gillette has read the Complaint and the Order contemplated hereby. It understands that, once the Order has been issued, it will be required to file one or more compliance reports setting forth the manner in which it intends to comply, is complying, and/or has complied with the Order. Gillette further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

A. It is ordered that respondent, The Gillette Company, a corporation, its successors and assigns, and its officers, directors, agents, representatives and employees, directly or indirectly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of razor blades, razors, toiletries or cosmetic grooming aids sold or offered for sale by respondent (hereinafter referred to as "Respondent's Covered Products") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, or the Clayton Act, as amended, shall cease and desist from paying or contracting to pay to or for the benefit of any customer anything of value as compensation or in consideration for newspaper advertising or promotional services or facilities furnished by or through such customer in connection with the handling, sale or offering for sale of any of Respondent's Covered Products unless:

(1) Respondent makes such compensation or consideration available on proportionally equal terms for alternative services or facilities that are usable and economically feasible for all customers who compete in the distribution or resale of Respondent's Covered Products and who do not regularly advertise in newspapers or for whom any newspaper advertising or promotional program or plan subject to paragraph I A of this Order is not usable or economically feasible, which services or facilities shall consist of: handbills and circulars in amounts not less than 1,000; off-shelf, end-of-aisle or dump displays; window or wall posters; store banners or shelf talkers; or other in-store promotional activities acceptable to respondent; and

(2) Respondent (i) imprints on the smallest shipping container used for Respondent's Covered Products the legend "Advertising, promotional, and display allowances are periodically made available by Gillette to all retailers. To obtain information about these promotional opportunities contact your supplier or write to: The Gillette Company [Safety Razor Division, Sales Promotion Department—P.O. Box 2131, Boston, Massachusetts 02106]. [Personal

Care Division, Sales Promotion Department, 101 Huntington Avenue, Boston, Massachusetts 02199]"; and (ii) for each promotion causes copies of "deal sheets" or similar materials explaining the availability of alternative methods of participation in respondent's advertising or promotional program or plan to be supplied to its wholesalers or distributors in sufficient quantity for presentation or delivery by such wholesalers or distributors to each customer or such wholesaler or distributor.

B. Provided, however, that nothing herein contained shall be construed or interpreted to abridge or otherwise restrict respondent's entitlement to avail itself of the "Meeting Competition Defense," the provisions of which are contained in Section 2(b) of The Clayton Act, 15 U.S.C. § 2(b), as amended.

II

It is further ordered that respondent shall within the twelve (12) month period beginning thirty (30) days after service upon it of this Order (hereinafter referred to as the "Effective Period") notify those retailers who purchase Respondent's Covered Products of the availability of alternative methods of participation in respondent's allowance programs by distributing a written notice in the form attached hereto as Exhibit A in the following manner:

(1) Such notice shall be contained in the "deal sheets" respondent delivers to its wholesalers, for presentation or delivery by such wholesalers to each customer of such wholesalers, in connection with five (5) major product promotions offered by respondent during the Effective Period; and

(2) Such notice shall be contained in a printed insert which will be included in each presealed "Counter Display" and "Floor Stand" distributed by respondent in connection with respondent's "World Series" promotion occurring within the Effective Period.

For purposes of paragraph II (1) of this Order, respondent shall give the notice contemplated therein in connection with respondent's "Super Bowl," "Valentine's Day," "All Star," "Miss America" and "World Series" product promotions if such product promotions are offered during the Effective Period. In the event that any of these product promotions are not offered during the Effective Period, respondent shall give the notice contemplated by paragraph II (1) in connection with a product promotion that is comparable to the one no longer offered.

III

It is further ordered that respondent shall deliver a copy of this Order to cease and desist to all sales and sales management personnel employed on the date of service of this order in each of respondent's operating divisions that is engaged in the sale of Respondent's Covered Products within the United States.

IV

It is further ordered that (i) within sixty (60) days after service upon respondent of this Order and (ii) within ninety (90) days after the end of the Effective Period, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied and is complying with this Order.

V

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

Exhibit A

Performance Alternatives: For accounts that do not regularly advertise in newspapers or for whom any other promotional program offered by The Gillette Company is not usable or economically feasible, The Gillette Company offers compensation for the following performance alternatives: handbills and circulars in amonts not less than 1,000; off-shelf, end-of-aisle or dump displays; window or wall posters; store banners or shelf talkers; or other in-store promotional activities acceptable to The Gillette Company.

The Gillette Company

Docket No. 9152

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Gillette Company (Gillette). The agreement is in settlement of the Commission's complaint concerning the advertising and promotional practices fo Gillette and requires Gillette to modify certain of those practices.

The proposed consent order is being placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Gillette is a major manufacturer of health and beauty aids and other products for personal care and use. The Commission conducted an investigation that focused on Gillette's advertising and promotional practices in connection with its sales of razors and razor blades, toiletries, and grooming aids. As a result of the investigation, a complaint was issued alleging that Gillette had violated Section 5 of the Federal Trade Commission Act, and subsection (d) of Section 2 of the Clayton Act, by paying or contracting for the payment of credits or sums of money in the form of discounts, allowances, rebates, or deductions as compensation or in consideration for promotional services or facilities provided by its customers in connection with the offering for sale or sale of Gillette's products. The complaint further alleged that these promotional allowances discriminated against particular customers or classes of customers in that they were not available, in a practical business sense, on proportionally equal terms to all customers competing in the sale and distribution of Gillette's products and that Gillette failed to offer alternative terms and conditions to customers for whom respondent's basic promotional allowance plan was not usable or suitable.

The purpose of the proposed order is to ensure that Gillette's advertising and promotional programs do not discriminate against certain customers or classes of customers. Section I.A.1. of the proposed order requires Gillette to make advertising allowances available for alternative services that are usable and economically feasible for its customers who compete in the resale of Gillette products and who do not regularly advertise in newspapers. The alternative services shall consist of handbills and circulars in amounts not less than 1,000; off-shelf, end-of-aisle or dump displays; window or wall posters; store banners or shelf talkers; or other in-store promotional activities acceptable to Gillette. Section I.A.2. states the methods Gillette will use to notify its customers of its promotional programs on an ongoing basis.

Section II describes the steps Gillette will take to notify all its customers of the modifications in its promotional programs.

Section III requires Gillette to deliver a copy of the order to all of its sales and sales management personnel in each of Gillette's operating divisons that is engaged in the sale of razors, razor blades, toilertries, or cosmetic grooming aids within the United States.

Section IV requires Gillette to file a report within sixty days after service of the order and a second report within ninety days from the end of the twelve-month period beginning thirty days after service of the order, setting forth the manner and form in which it has fulfilled the provisions of Sections I, II, and III.

Section V requires Gillette to notify the Commission of any changes in corporate organization that might affect its obligations under the order.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Michael A. Baggage,

Acting Secretary.

Statement of Commissioner Patricia P. Bailey

The Gillette Company, Docket No. 9152

August 1, 1983.

While I have voted to place this consent order on the public record for comment, I am concerned about payments of promotional allowances that exceed the cost, or approximate cost of the promotions themselves. While the main thrust of the order here is simply to afford broader promotional benefits to more of Gillette's customers, the overpayments issue ought not be overlooked in the public comment period. Such overpayments might be in violation of the Commission's amended (1972) *Guides for Advertising Allowances and Other Merchandising Payments and Services*, 16 CFR § 240 et seq., and might appear as price discriminations in violation of Section 2(a) of the Robinson-Patman amendments to the Clayton Act. The latter might be the case where promotional allowances to at least some customers exceed the expenses of actual promotions, and where such allowances are not made available to all a supplier's customers on non-discriminatory terms.

The issue of whether promotional payments may exceed the cost of promotions themselves was last addressed by the Commission in 1976, when it reaffirmed its support for the "cost or approximate cost" basis for measuring proportionality. (See footnote 2 to Guide 9, and Guide 11) While I do not believe that the Commission intends today to depart from this longstanding policy position, this order may be read by some to imply such a change of position. Because any sanctioned overpayments in excess of promotional costs may disguise price discriminations, this is a serious issue in the event that such discriminations resulted in injury to competition.

[FR Doc. 83-23103 Filed 8-22-83; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 20074; File No. 4-220]

Deferral of an Order Exposure Rule

AGENCY: Securities and Exchange Commission.

ACTION: Deferral of Proposed Rule; Request for Comment.

SUMMARY: The Commission today announces its decision to defer action on its proposed order exposure rule and solicit comment on the trading experience of broker-dealers and investors with respect to securities eligible for off-board trading pursuant to Rule 19c-3 under the Securities Exchange Act of 1934.

DATE: Comments to be received by October 3, 1983.

ADDRESSES: Persons desiring to submit such data, views and arguments should file six copies with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549, Stop 6-9. Reference should be made to File No. 4-220.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby at (202) 272-2413; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

Request for Comment on Off-Board Trading Pursuant to Rule 19c-3

The Commission today announces its decision to defer action on its proposed order exposure rule [1] and solicit comment on the trading experience of broker-dealers and investors with respect to securities eligible for off-board trading pursuant to Rule 19c-3 under the Securities Exchange Act of 1934 ("Act").[2]

[1] Proposed Rule 11A-1 under the Securities Exchange Act of 1934. *See* Securities Exchange Act Release No. 19372 (December 21, 1982), 47 FR 58287.

[2] 17 CFR § 240.19c-3.

I. Background of Rule 19c-3

On June 11, 1980, the Commission adopted Rule 19c-3 ("Rule").[3] The Rule precludes exchange off-board trading restrictions from applying to reported securities [4] that were listed on an exchange after April 26, 1979,[5] or that were listed on an exchange after April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter ("Rule 19c-3 Securities").

Rule 19c-3 had its genesis in the Securities Acts Amendments of 1975 ("1975 Amendments"),[6] in which Congress directed the Commission to facilitate the establishment of a national market system ("NMS") for securities.[7] In the 1975 Amendments, Congress explicitly, and without qualification, directed the Commission to review exchange off-board trading restrictions, to report to Congress on that review, and to commence a proceeding to amend any such restrictions which imposed an unnecessary or inappropriate burden on competition.[8]

In response to that directive, the Commission issued a report on September 2, 1975, concluding that off-board trading restrictions were anti-competitive, and commencing a proceeding to remove those restrictions.[9] On December 19, 1975, the Commission adopted Rule 19c-1, eliminating most off-board trading restrictions on agency transactions but deferring action on principal restrictions until comment could be received from the National Market Advisory board ("NMAB") and further steps were taken in the development of the NMS.[10] Again concluding that exchange off-board trading restrictions imposed a burden on competition, the Commission on June 23, 1977, began a second proceeding to remove all such remaining restrictions by proposing Rule 19c-2.[11] On January

[3] Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125 ("Rule 19c-3 Adoption Release").

[4] Reported securities are securities for which transaction reports are made available pursuant to an effective transaction reporting plan. *See* Rule 11Aa3-1(a)(4), 17 CFR § 240.11Aa3-(e)(4).

[5] Rule 19c-3 was proposed on April 26, 1979. Securities Exchange Act Release No. 15769 (April 26, 1979), 44 FR 25688.

[6] Pub. L. No. 94-29 (June 4, 1975), 89 Stat. 97.

[7] Section 11A(a)(2) of the Act.

[8] Section 11A(c)(4)(A) of the Act.

[9] Securities Exchange Act Release No. 11628 (September 2, 1975), 40 FR 41808.

[10] Securities Exchange Act Release No. 11942 (December 19, 1975), 41 FR 4507.

[11] Securities Exchange Act Release No. 13662 (June 23, 1977), 42 FR 33510. The NMAB had submitted its final report to the Commission on off-board trading restrictions which concluded that "off-board trading restrictions are a burden on competition" and that "the purposes of the Act do

26, 1978, the Commission deferred action on this proceeding until several proposed elements of the NMS were in place.[12]

Finally, on June 11, 1980, the Commission adopted Rule 19c-3, which removed all remaining off-board trading restrictions for securities listed after April 26, 1979, thus preventing the further extension of off-board trading restrictions to newly-listed securities. In adopting the Rule, the Commission reiterated earlier Commission determinations that off-board trading restrictions are anti-competitive. The Commission concluded that those anti-competitive effects could not be justified with respect to Rule 19c-3 Securities because the benefits of increased actual and potential competition obtained from the adoption of the Rule, along with the experiential benefits of observing concurrent trading of listed securities by exchange markets and over-the-counter ("OTC") market makers, outweighed the possibility of adverse consequences.[13] In making this determination, the Commission found that because the Rule was limited to newly-listed securities, it did not raise the same potential concerns as previous proposals, which arguably could have had significant effects on the markets for securities with established exchange markets.[14]

II. Events Since the Adoption of Rule 19c-3

In order to evaluate the effects of Rule 19c-3 on the securities markets, the Commission established a monitoring program to examine the extent of Rule 19c-3 trading, its impact on the overall markets for Rule 19c-3 Securities, and, in conjunction with the National Association of Securities Dealers, Inc. ("NASD"), the extent, if any, of overreaching of customers by OTC market makers in Rule 19c-3 Securities. The Commission published a report on this program in August 1981,[15] which concluded that, based on the limited amount of OTC trading pursuant to Rule 19c-3 that had developed up to that time, no significant adverse effect on the quality of the markets for Rule 19c-3 Securities could be discerned, nor had any overreaching problems of significance resulted from OTC market making pursuant to the Rule.

One impediment to effective OTC trading in Rule 19c-3 Securities noted in the Rule 19c-3 Adoption Release and the *Monitoring Report* was the lack of an effective linkage between the OTC and exchange markets. Accordingly, the Commission sought to link those markets and thereby further the statutory objective of linking "all markets for qualified securities through communication and data processing facilities * * *."[16] After the parties were unable to reach agreement on various issues essential to implementation of such a linkage, on April 21, 1981, the Commission issued an order ("Linkage Order") mandating the establishment of an automated interface between the Intermarket Trading System ("ITS")[17] and the NASD's Computer Assisted Execution System ("CAES").[18] After further Commission action to effect changes in the plan governing operation of the ITS to allow for its implementation,[19] the linkage began on May 27, 1982.[20]

In adopting the Linkage Order, the Commission reaffirmed its finding that it had not identified any adverse effects of Rule 19c-3 trading to that date. Moreover, the Commission concluded that an interface between the ITS and CAES would not exacerbate directly in any structural way the concerns raised with respect to Rule 19c-3. Nevertheless, in support of industry efforts to develop a consensus regarding the appropriate means to enhance order interaction in Rule 19c-3 Securities, the Commission instituted a rulemaking proceeding to focus public attention on the various proposals that had been made in this area. Specifically, on May 13, 1982, the Commission proposed two alternative rules, Rules 11A-1(A) and 11A-1(B), that would have required the exposure of certain orders to the marketplace before a broker-dealer could execute them as principal.[21] The Commission, however, did not take a view on the ultimate desirability of adopting either rule.

The Commission received over 450 letters of comment in response to the proposed rules. In light of those comments, on December 23, 1982, the Commission reproposed a single rule, Rule 11A-1 ("order exposure rule"), for public comment, again taking no position on whether the rule should be adopted.[22] In proposing this rule the Commission again stated that its monitoring of trading pursuant to Rule 19c-3 had not identified any discernable adverse consequences on the market for Rule 19c-3 Securities, and, if anything, the linkage appeared to have resulted in slightly increased market making competition.[23]

The Commission's preliminary conclusion is that if an order exposure rule were to be applied to the markets for Rule 19c-3 Securities, it should be applied in an attempt to obtain the potential benefits of order exposure, rather than in an attempt to address the speculative concerns[24] regarding the effects of OTC trading in Rule 19c-3 Securities.[25]

Since the reproposal of Rule 11A-1 there have been significant changes in the markets for Rule 19c-3 Securities. In April 1983, Merrill Lynch, Pierce, Fenner and Smith, Inc. ("Merrill Lynch"), the largest OTC market maker in Rule 19c-3 Securities, and a participant in the linkage, ceased making markets in Rule 19c-3 Securities. In addition, other OTC market makers in Rule 19c-3 Securities, such as Paine, Webber, Jackson and Curtis, Inc. and Goldman, Sachs and Co. (neither of which participated in the

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not justify exchanges maintaining such restrictions generally and indefinitely." The NMAB, however, was divided on whether and when particular restrictions should be removed. Letter from John J. Scanlon, Chairman, NMAB, to the Commission, dated May 14, 1977, at 2-3.

[12] Securities Exchange Act Release No. 14416 (June 26, 1978), 43 FR 4354. The Commission later withdrew proposed Rule 19c-2. Securities Exchange Act Release No. 16889 (June 11, 1980), 45 FR 41156.

[13] Commentators had argued that rules removing off-board trading restrictions in general, and Rule 19c-3 in particular, could result in broker-dealers "internalizing" their order flow, leading to the "fragmentation" of the markets for listed securities and could lead to the "overreaching" of customers and would have adverse effects on exchange market makers and small broker-dealers. For further discussion of these issues, see the Rule 19c-3 Adoption Release, *supra* note 3, at 18-22, 45 FR at 41128-31.

[14] Rule 19c-3 Adoption Release, *supra* note 3.

[15] Securities and Exchange Commission, *A Monitoring Report on Rule 19c-3 under the securities Exchange Act of 1934*, (Securities Exchange Act Release No. 18062 (August 25, 1981), ("*Monitoring Report*").

[16] Section 11A(a)(1)(D) of the Act.

[17] The ITS is an intermarket communications system operated jointly by certain national securities exchanges and the NASD, and authorized by the Commission as an NMS facility pursuant to Section 11A(a)(3)(B) of the Act.

[18] Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23656.

[19] Securities Exchange Act Release No. 18713 (May 9, 1982), 47 FR 20413.

[20] The first phase of the linkage order permitted the thirty most active Rule 19c-3 Securities with ITS/CAES market makers to be traded through the interface. The second phase of the order, which is now scheduled to become effective on September 15, 1983, will permit all Rule 19c-3 Securities with an ITS/CAES market maker to be traded through the interface. In this regard, the Commission notes that, although the ITS Plan anticipates the possibility of further amendments prior to the commencement of this phase of the interface, if such amendments are not approved by the Commission by September 15, the Plan procedures with respect to Phase I will continue in effect pursuant to the Commission's order.

[21] Securities Exchange Act Release No. 18738 (May 13, 1982), 47 FR 22376.

[22] Securities Exchange Act Release No. 19372 (December 23, 1982), 47 FR 58287 ("Reproposal Release").

[23] *Id.* at 13-15, 47 FR at 58289-90.

[24] *See* note 13, *supra*.

[25] *Id.* at 25-26, 47 FR at 58292. In response to its solicitation of comments, the Commission received over 325 comments on the order exposure rule.

linkage), subsequently ceased making such markets. The reasons stated for these actions were varied, and included the need to redeploy scarce personnel during the current active securities markets, frustration with inefficiencies in the current operation of the ITS/CAES linkage and dissatisfaction with trading in the current Rule 19c–3 environment. Indeed, one of these market makers, Goldman Sachs & Co., has called for the rescission of Rule 19c–3.

Following these actions, the percentage of OTC volume in comparision to consolidated volume in Rule 19c–3 Securities has declined substantially. For example, the OTC share of volume for securities included in the linkage has declined from 14.1% in January 1983 to 3.6% in June, 1983. In addition, OTC volume in all Rule 19c–3 Securities has declined from a high of 7.3% in June and September of 1982, to 2.3% in June of 1983.

III. Discussion and Request for Comment

In light of the limited amount of OTC trading in Rule 19c–3 Securities, the Commission has determined not to take further action on the proposed order exposure rule at the present time. The rule was intended to provide benefits to the securities markets by encouraging enhanced interaction of orders, increased opportunities for best execution of customer orders, and greater intermarket competition for orders. On the other hand, the rule would impose certain costs (ultimately borne by the investing public) by requiring broker-dealers to provide price protection and expose orders to competing market centers for up to 30 seconds before execution.[26] The current low level of OTC trading in these securities limits the benefits that could be achieved by an order exposure rule, and the Commission believes that, at the present time, the costs of the rule would outweigh the benefits.[27]

In addition, due to the recent significant changes in the level of trading activity in the OTC market for Rule 19c–3 Securities, the Commission believes that this is an opportune time to seek comment on the trading experience of broker-dealers and investors pursuant to Rule 19c–3. Currently available date from the NASD and the Commission's monitoring indicates that Rule 19c–3 has not had an adverse effect on the markets. The Commission is interested in receiving any additional *hard objective data* (as opposed to speculations or opinions not based upon such evidence) which either supports this conclusion or indicates that the Rule has had an adverse effect on the securities markets for Rule 19c–3 Securities. The Commission also believes it would be appropriate for the commentators to provide whatever conclusions they derive from either the Commission's monitoring data or other data submitted.[28]

Commission options include determinations to leave Rule 19c–3 in its present form, to expand the Rule to cover additional securities, or to rescind the Rule.[29] With respect to rescission of the Rule, it should be noted that there is a clear statutory directive to remove unnecessary competitive impediments, specifically with respect to off-board trading restrictions, unless such impediments are necessary to achieve other purposes of the Act. Whether any OTC market makers use Rule 19c–3, or whether the volume of activity in Rule 19c–3 Securities rises to any particular level, in a sense is irrelevant. Accordingly, the Commission believes that a finding that any competitive benefits from OTC trading in Rule 19c–3 Securities have been reduced by the recent decline in OTC market making in Rule 19c–3 Securities, or even that OTC trading in Rule 19c–3 Securities in the future may completely cease, would not singularly justify commencement of a proceeding regarding rescission of Rule 19c–3.

Interested persons are invited to submit written data, views and arguments regarding this matter by October 3, 1983. Persons desiring to submit such data, views and arguments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. 4–220.

Copies of the submissions which are filed with the Commission, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C.

By the Commission.

George A. Fitzsimmons,

Secretary.

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[26] The rule, however, does provide an alternative to order exposure that could prove less burdensome to some broker-dealers and contained a number of exemptions to the order exposure requirement. *See* the Technical Appendix to the Reproposal Release, *supra* note 22.

[27] An order exposure rule also may not be justifiable unless certain changes are effected in the ITS/CAES interface to allow it to operate more efficiently.

[28] In this regard, recent data with respect to trading in Rule 19c–3 Securities is attached as a Statistical Appendix to this release and will be published in the *SEC Docket*. In addition, copies can be obtained from the Public Reference Room, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

[29] Other conclusions could address the current operation of the ITS/CAES linkage. Specifically, commentators may believe it appropriate to address whether the linkage as currently constituted provides an efficient method of linking the OTC and exchange markets in Rule 19c–3 Securities.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 83N-0010]

Butter and Whey Butter; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY: The Food and Drug Administration (FDA) is terminating consideration of the establishment of U.S. standards of identity for butter and whey butter, based on the "Recommended International Standard for Butter and Whey Butter" (Codex Standard No. A–1), because section 401 of the Federal Food, Drug and Cosmetic Act (the act) prohibits the establishment of a definition and standard of identity or quality for butter and there is not sufficient need to warrant proposing a U.S. standard for whey butter.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1155.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 18, 1983 (48 FR 7200), FDA published an advance notice of proposed rulemaking which offered interested persons an opportunity to review the Codex standard for butter and whey butter and to comment on the desirability and need for U.S. standards of identity for butter and whey butter. The Codex standard was submitted to the United States for consideration of acceptance by the Food and Agriculture Organization/World Health Organization's Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, a subsidiary body of the Codex Alimentarius Commission. In that notice, the agency commented that U.S.